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IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

STATE OF NEW YORK,

Petitioner,

v.

BENIGNO CLASS,

Respondent.

ON WRIT OF CERTIORARI TO THE
COURT OF APPEALS OF NEW YORK

BRIEF AMICI CURIAE OF AMERICANS FOR EFFECTIVE LAW ENFORCEMENT, INC. JOINED BY THE INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE, INC., THE ILLINOIS ASSOCIATION OF CHIEFS OF POLICE, INC., THE NEW YORK STATE ASSOCIATION OF CHIEFS OF POLICE, INC., AND THE LEGAL FOUNDATION OF AMERICA, IN SUPPORT OF THE PETITIONER

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This is filed pursuant to Rule 36 of the Supreme Court Rules. Consent to file has been granted by Hon. Mario Merola, Bronx District Attorney, Bronx, New York, Counsel for Petitioner, and William E. Hellerstein, Esq., Counsel for Respondent. Letters of Consent of both parties have been filed with the Clerk of this Court.

INTEREST OF AMICI

Americans for Effective Law Enforcement, Inc. (AELE), as a national not-for-profit citizens organization, is interested in establishing a body of law making the police effort more effective, in a constitutional manner. It seeks to improve the operation of the police function to protect our citizens in their life, liberties and property, within the framework of the various State and Federal Constitutions.

AELE has previously appeared as *amicus curiae* fifty-nine times in the Supreme Court of the United States, and thirty-three times in other appellate courts, including the Federal District Courts, the Circuit Courts of Appeal and various state courts, such as the Supreme Courts of California, Illinois, Ohio and Missouri.

The *International Association of Chiefs of Police, Inc.* (IACP), is the largest organization of police executives and line officers in the world, consisting of more than 12,600 members in 62 nations. Through its programs of training, publications, legislative reform, and *amicus curiae* advocacy, it seeks to make the delivery of vital police services more effective, while at the same time protecting the rights of all our citizens.

The *Illinois Association of Chiefs of Police, Inc.*, and *New York State Association of Chiefs of Police, Inc.*, are not-for-profit associations consisting of members who are police chiefs and senior law enforcement executives. They too, seek to represent in our courts the concern of the average citizen with the problems of crime and police effectiveness in dealing with crime, with special emphasis upon the problems and concerns of police officers who face numerous legal and practical problems on a day-by-day basis in their effort to protect public safety, including through the all-important process of investigating reports of stolen vehicles. In addition, the New York State Association is particularly concerned about the restrictive effect of the decision below in the State of New York,

and the Illinois Association's concern about the problem of stolen vehicles in that state is well expressed by Illinois Secretary of State Jim Edgar whose article is cited in this brief.

The *Legal Foundation of America (LFA)* is a nonprofit corporation supporting the operations of a public interest law firm. Among other goals, it seeks to preserve a rational criminal justice system, in which adjudications of guilt or innocence are reliable rather than haphazard. The Foundation's attorneys have previously appeared as *amicus curiae* in this Court to urge this view. All litigation undertaken by the Foundation is approved by its Board of Trustees, the majority of whom are attorneys. LFA does not accept private fees and is supported by grants from the public.

Amici well know the problems faced by police officers in their good faith attempts to investigate stolen vehicles in a manner that comports with the myriad of rules and exceptions that have been judicially engrafted upon the Fourth Amendment. The state of this intricate complex of rules as applicable to automobiles, and specifically the identification of stolen vehicles, as well as the scope of the auto theft problem, compels these organizations to speak on behalf of law enforcement officers in this case.

ARGUMENT

I.

The Court Below Erroneously Construed the Fourth Amendment by Holding That a Police Officer Conducted a Search When, After Lawfully Stopping the Respondent's Automobile for a Traffic Infraction, He Pushed Aside Some Papers on the Dashboard In Order To Routinely Inspect the Car's Vehicle Identification Number, Which is Ordinarily Viewable Through the Windshield

Americans for Effective Law Enforcement has been privileged to file many *amicus curiae* briefs with this Court. In several of them, as in the present one, it has been joined by the *International Association of Chiefs of Police,* various state associations of chiefs of police, and the *Legal Foundation of America.* Those briefs have presented an analysis of the relevant case law and offered suggestions to the Court for decisions that would aid rather than unduly hinder effective law enforcement, and without impinging upon basic constitutional protections. In the present brief, we will not undertake an extended analysis of the case law, but will confine our brief to the law enforcement impact of the issues raised by the parties.

We must, however, note the legal unsoundness of the New York Court of Appeals' conclusion that when the police officer opened the door of respondent's automobile and reached inside in order to view the vehicle identification number (hereinafter referred to as VIN), he conducted a search within the purview of the Fourth Amendment.

As noted in footnote 2 of the dissenting opinion, *People v. Class,* 63 N.Y.2d 491, 483 N.Y.S.2d 181, 186 (1984), the issue has been considered by a large number of courts prior to it being addressed by this Court. The decisions break down roughly into three groups: (1) those holding that entry into a motor vehicle to observe the VIN is not a search under the

Fourth Amendment; (2) those holding that even if such a procedure is a search, it is a limited procedure that can be executed on less than probable cause (reasonable suspicion such as that triggered by an observed traffic violation); and (3) those invalidating police inspections of VIN's on the basis that probable cause was lacking.

The cases are exhaustively collected in footnote 2 and *amici* will not burden this Court with repetition. It appears, however, that the third view is a minority.

Amici submit that the better reasoned view is found in the opinions of those courts adopting the first position, although we also submit that should this Court adopt the position that reasonable suspicion is required in such cases, that standard has been more than amply satisfied in this case where the Respondent had committed a traffic infraction (speeding) and failed to produce a driver's license.

Among the many decisions holding to the first view, the court in *United States v. Polk*, 433 F.2d 644 (5th Cir. 1970) perhaps best summarized the legal and policy issues involved in police inspection of VIN's:

> . . . such a limited inspection of a vehicle identification number is not a search within the meaning of the Fourth Amendment. The rationale for this holding is that an automobile owner can have no reasonable expectation of privacy with respect to the car's VIN. . . .
>
> Vehicle identification numbers are put on automobiles by the manufacturers to aid in identifying the vehicles. There are so many similar cars that individual vehicles can be identified only through the use of such individual numbering. State laws contain many requirements for disclosing and recording such VIN's, showing a generally accepted mode of disclosure and the lack of any reasonable expectation of privacy with respect to the numbers.
>
> Most states require that automobiles be registered with a state agency to establish a record of car ownership. The registration, which must be carried in the car, identi-

fies the car by its VIN. These requirements proceed from a purpose to keep track of the ownership of potential instruments of personal and property injury, so that drivers in automobile accidents can be traced and so that compulsory insurance requirements can be enforced.

. . .

It is routine practice for policemen stopping cars in traffic control operations to ask for the automobile registration papers in addition to the driver's license. Viewing registration papers is part of the accepted regulatory scheme.

VIN's are typically disclosed to private parties also. Automobile purchase and sale documents usually identify the car by its VIN. Automobile insurance policies also identify cars by their VIN's. There can therefore be no reasonable expectation of privacy with respect to the identity of the VIN. Opening the car door, looking under the hood, or crawling under the car to inspect the rear axle does not independently bring an inspection of the VIN within the scope of the Fourth Amendment.

A car is not a home. An automobile runs and stops on the public roads, where viewers may crawl under it or press their faces against its windows. Its exterior and much of its interior are within the "plain view" of the casual or purposeful onlooker, and thus are not protected by the Fourth Amendment from searching eyes. . . .

Thus the VIN on the rear axle or on the car frame are outside any reasonable expectations of privacy. Those that may be seen only by opening the car door or hood are no more private: doors and hoods are continually opened to the eyes of observers. Although opening the door of a car may involve a technical trespass, such action does not invade any expectations of privacy.

433 F.2d at 647.

Amici well know from our experience as law enforcement and public interest associations that the problem of auto theft has assumed monumental proportions in our country. We also

know that the VIN has taken its place as crucial to any even remotely successful law enforcement effort to cope with the auto theft problem.

As recently described by Illinois Secretary of State Jim Edgar:

> Auto theft is second only to illegal drug sales in providing monetary gain for the criminal element in our society. Approximately 1 million vehicles were stolen nationally in each of the last three years . As a result, auto theft is costing U.S. vehicle owners an estimated $4 billion a year in higher insurance rates.
>
> In Illinois, about 54,000 vehicles were stolen in 1984. An estimated 40,000 were dismantled at chop shops so that specific parts could be sold to unscrupulous body shops and repairers.

Edgar, *Combating Organized Auto Theft,* Illinois Police Association Journal, April 1985, p. 8.

Edgar described some of the activities of the State of Illinois in attempting to cope with this problem and the role played by the VIN in law enforcement attempts to identify and track stolen vehicles, especially with respect to the operations of interstate chop shops:

> The Springfield Auto Theft Unit operates in central Illinois. During 1984, the unit conducted a seven-month investigation resulting in the arrest of a Charleston man and the recovery of at least 19 stolen automobiles with an estimated value of over $250,000. Larry McGrath, owner of McGrath's Auto Repair, allegedly disguised vehicles stolen from the Chicago area by replacing their vehicle identification number (VIN) plates with VIN plates from salvaged vehicles. Investigators recovered VIN plates and interiors from stolen vehicles, as well as the stolen vehicles themselves.
>
> The East St. Louis Auto Theft Unit handles cases in southern Illinois. A four-month investigation of a chop shop being operated on a farm near Collinsville concluded with the arrest of six men last year on 32 counts of auto theft and conspiracy.

> The group was responsible for at least 15 thefts of Ford trucks from parking lots and private residences in Madison and St. Clair Counties, and in Missouri. The trucks were taken to the farm, owned by Joseph Waitukaitis, where they were cut into pieces and the parts sold. The group was also switching VIN plates from salvage trucks to stolen trucks.

Edgar at 8.

Interestingly, Edgar also notes that the problem has another facet: "In addition to being an important law enforcement issue, auto theft is an important consumer issue. Unsuspecting buyers may unwittingly purchase potentially dangerous cars and parts."

Edgar at 8.

The scope of the problem is further seen in statistics gathered by the New York State Police. According to the 1984 New York Statewide Police Information Network, Year End Report, p. 1305, 140,347 vehicles were reported stolen in New York State in 1984, and there were 29,062 cases of stolen license plates. With such widespread traffic in stolen license plates, and therefore the unreliability of license plates as indicia of ownership, the role of the VIN in identifying vehicles takes on even greater proportions.

Even though a VIN can be seen through the windshield (unless obscured by extraneous materials), there is frequently a duplicate VIN on the door frame and often thieves will put a stolen VIN or a VIN obtained from salvage vehicles on the dashboard that does not match the door frame VIN. Thus there is the additional necessity of the police checking more than the dashboard VIN to accurately determine the nature of the vehicle. VIN switching by chop shop operators is common, as noted by Edgar.

It was recently reported by Dudley Clendinen in the New York Times that:

> Massachusetts had the highest rate of car theft in the country in 1983, the most recent year for which figures are available from the Federal Bureau of Investigation. Michigan and New York came next. Losses due to car theft, the [Massachusetts] Governor's office said, total $65 million in Massachusetts every year, and $5 billion in the nation as a whole.

Clendinen, *Device Could Aid Police in Tracking Stolen Cars,* New York Times, April 13, 1985, p. 6.

Clendinen described an electronic tracking device that can be implanted within a vehicle and activated by the police upon report of the vehicle's theft. Such a device could indeed introduce a more sophisticated technology to the law enforcement task of locating and recovering stolen vehicles, but it should not be supposed that its use will become general in the foreseeable future due to, among other factors, its cost (approximately $500 for car owners, $2,300 for police tracking units, and $500,000 to $1 million dollars for statewide engineering and systems hardware: Clendinen, p. 6).

Amici submit that unfettered law enforcement access to the VIN, wherever located on a vehicle, is essential. We say this on the basis of our experience and the collective experience of our membership, including chiefs of police from every part of the United States and every type of police agency. We will be pleased to witness the space age technology of beeper tracking of stolen vehicles, but until that day arrives access to the VIN will remain the only effective link in identifying and recovering stolen vehicles. We respectfully submit that if this Court rules that there is a protected privacy interest in the VIN and its location, requiring application of a probable cause standard, effective law enforcement efforts in this area will virtually cease.

CONCLUSION

Amici respectfully submit that the decision of the New York Court of Appeals should be reversed on the facts and law, and on the basis of sound judicial policy.

Respectfully submitted,

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